

1 **DIRECT TESTIMONY OF MARGARET ANN "NICOLE" SAWAYA**

2

3 **Q: Please state your full legal name and address for the Presiding Administrative Law**
4 **Judge.**

5 Margaret Ann Sawaya, 499 Alabama Street, San Francisco, California 94110. For many
6 years I have gone by the first name of Nicole.

7

8 **Q: What is your current position and title?**

9 I am the General Manager of KALW(FM), 91.7 MHz, in San Francisco, California, a
10 position I have held since March 1, 2001.

11

12 **Q: As you are aware, during the course of this license renewal proceeding an issue has**
13 **been raised about the completeness and veracity of the testimony you provided at your**
14 **deposition on September 28, 2004. Is there a general statement you would like to make in**
15 **that regard?**

16 Yes. I very much appreciate the opportunity to appear before the FCC and to share with
17 the Judge the kind of person I am and the circumstances surrounding my deposition testimony. I
18 have the highest regard for this fact-finding process and understand the role truthful and complete
19 testimony plays in the fulfillment of the FCC's responsibilities. I am extremely sorry if any of the
20 testimony from my deposition or declaration created confusion, appeared inconsistent, or
21 conveyed anything short of full disclosure. I have tried my best to recall these events of early
22 2001 and am disappointed and embarrassed that I cannot provide a greater degree of detail
23 regarding certain events.

24 KALW is a real asset to the community and I have been honored to play a role in its return
25 to prominence throughout the San Francisco area. In order to put this process back on the right
26 track I have spent many hours reviewing documents, sorting through my personal files and e-mail
27 archives, and doing my utmost to recall as many details as possible from the March/April 2001
28 timeframe.

1 My sole aim is to provide the Judge with all of the information I can and hopefully
2 through this process to demonstrate that I am not a person who would ever intentionally mislead
3 this tribunal or this process. And so I welcome this opportunity to explain who I am, what I
4 believe in, and the outstanding work of our Station, KALW.

5
6 **Q: Towards that end, please tell the Presiding Administrative Law Judge about your**
7 **background and how you came to be involved in public radio and in public arts generally?**

8 I was born in Downey, California, a working-class suburb of Los Angeles. ~~My father first~~
9 ~~arrived there from Lebanon, by way of Ellis Island, Detroit and Chicago. A peddler of linen and~~
10 ~~lace, my father eventually established a small department store in what is now called Watts, an~~
11 ~~area then predominantly Latino.~~

12 I attended Catholic school in Downey, and took ballet, tap dance and piano lessons. ~~My~~
13 ~~parents wanted me to blend in, though that was quite difficult for Arab immigrants at that time.~~
14 When I was 18, I was invited by a visiting director to audition for The New Shakespeare
15 Company in San Francisco. I moved north in 1970 after landing a position with the troupe –
16 where I worked three years. That was the beginning of my career in the arts.

17
18 **Q: How did you come to be involved in broadcasting?**

19 At 33, I gave birth to my son and felt that a career in the performing arts was just too
20 marginal. I decided to get my college degree. I enrolled at San Francisco State University and
21 majored in broadcasting. I made the commute there three days a week from Mendocino County,
22 accompanied by my then 18-month old son. I did that for five years.

23 My first job in radio was an internship at KQED(FM), the largest public radio station in
24 San Francisco. I worked there for several years as an independent producer and journalist. I also
25 worked as a freelance journalist for other news outlets. All of this I did while simultaneously
26 earning my degree. I also worked on camera as a public affairs host at KQED-TV, San
27 Francisco.

1 Three months after receiving my bachelor's degree in broadcasting, I applied for a job at
2 KZYX(FM), Philo, California, a public radio station serving Mendocino County.

3

4 **Q: What were your job titles and responsibilities at KZYX?**

5 I was hired as Program Director and became Station Manager for the last six months of
6 my stay. KZYX is a rural public radio station. With respect to recordkeeping, I specifically
7 remember keeping track of certain environmental shows because that was a hot button topic in the
8 area at the time. I also remember collecting program lists; however, this was a rural station and
9 back then most of the folks we worked with did not even have computers, so documenting
10 programming was pretty unstructured. Ownership reports and all technical/log reports were done
11 by the Board of Directors and Chief Engineer, respectively. Indeed, I don't think I ever saw an
12 ownership report until I got to KALW.

13

14 **Q. What did you do next?**

15 From KZYX I left for a position at National Public Radio (NPR) in Washington, D.C. I
16 was there two years. I probably would have stayed at NPR if an offer from Pacifica Foundation
17 (KPFA(FM), Berkeley, California) had not come calling.

18

19 **Q: What was your job title and responsibilities at KPFA?**

20 I was the General Manager (GM) and handled most of the responsibilities of a traditional
21 GM. KPFA has a unique governance structure because it belongs to a national foundation that
22 operates five noncommercial radio stations. KPFA in Berkeley is the flagship station. I oversaw
23 approximately twenty-eight payroll employees and over twenty to twenty-five regular volunteers.
24 We frequently had additional volunteers on special projects.

25 Regulatory filings, either at the local, state or federal level, were the exclusive
26 responsibility of the national Pacifica Foundation and were not something with which I had any
27 involvement. The Foundation had a full administrative staff who interacted with the Board of
28 Directors and handled the business of each of the Foundation's individual stations. I attended

1 infrequent "Administrative Council" meetings, but all regulatory work was done by the
2 Foundation.

3
4 **Q: You ultimately left KPFA under a significant amount of media scrutiny. What**
5 **happened?**

6 After 15 months of employment, the Foundation's new Executive Director decided that
7 someone else should lead KPFA in a new direction and did not renew my annual contract. After
8 my dismissal they also released a significant number of other staff members. There were large
9 protests for weeks both inside and outside the station, culminating in the lock-out of all union and
10 non-union station employees. Guards were called in. Although many of the press accounts
11 pointed to my dismissal as the source of the uproar, I declined repeated calls to be actively
12 involved in the protests.

13
14 **Q: Did anything further come of the Foundation's decision not to renew your contract?**

15 Yes. After approximately six months of demonstrations, the last weeks being the lock-
16 out, the Foundation brought back most, but not all of the employees. I was not among those
17 asked to return. I ultimately reached a legal settlement with the Foundation. This was a very
18 difficult experience to get over.

19
20 **Q: What did you do next?**

21 I took a position as a media consultant for Pacific News Service where I worked closely
22 with the Executive Director. The job was principally project driven. One of those projects was
23 putting on a Youth Expo at Juvenile Hall in San Francisco. It was the first time that ballet and
24 other arts were available to young people in the juvenile justice system. I also organized and
25 participated in a number of forums where I represented the ethnic press. This was a way to segue
26 slowly back into city life.

1 **Q: How did you come to work at KALW?**

2 I met Bill Helgeson when I was working for NPR. He called me out of the blue in mid-
3 2000 and said KALW was looking for a new General Manager, and he thought that I should
4 apply. Bill said that Jeff Ramirez, then at CPB, had recommended he call me. I knew Jeff from a
5 program we were both in called "Next Generation Project" and our paths have crossed many
6 times since.

7 I completed the District's application and then waited. The process took quite some time.
8 At some point during the next several months I met with Glenston Thompson, who was acting as
9 chief operating officer for the District and then with a committee of three that included Bill.
10 After a period of time, I met with Jackie Wright who was the Executive Director, Office of Public
11 Engagement and Information, of SFUSD. Jackie indicated she wanted to hire me but that I would
12 first need to meet with the Superintendent of the District, Arlene Ackerman. After meeting with
13 the Superintendent, I received a formal offer. This was mid-February 2001.

14
15 **Q: What did you know about KALW before you started?**

16 Not very much. I knew about the Station but wasn't familiar with its programming or
17 management. I also knew it was a school district station and I had never worked for an
18 institutional licensee. I learned from the interview process that the District was looking for
19 stability at the Station. The questions I had about the Station during the interview process were
20 primarily administrative: Is the Station in deficit? How many members? What is the union
21 situation? Is the Station in good standing with its membership partners? Of course, I also asked
22 about the salary and benefits.

23
24 **Q: At any time prior to the start of your work at KALW did anyone tell you or did you**
25 **become aware that KALW's license renewal was at issue?**

26 No. It was never brought to my attention and I did not learn about it on my own.
27
28

1 Q; When did you start at KALW and what were your priorities during the first few
2 weeks?

3 I began on March 1, 2001. **Proposed SFUSD Exhibit No. 16 [also Proposed EB**
4 **Exhibit 47] (by stipulation)** is my Daily Calendar from March 2001. According to **Proposed**
5 **SFUSD Exhibit No. 16**, March 1 was a Thursday. I had given exactly two-weeks notice at my
6 prior job and did not take any time off between positions. I did, however, negotiate in advance to
7 take a 3-day vacation beginning on March 9 to celebrate my son's birthday.

8 Any new General Manager of a radio station assumes a large amount of administrative
9 responsibility. KALW was no exception. It was also incumbent upon me to meet and speak with
10 as many of the Station's staff and management as possible. Most of my first days were spent
11 literally walking around the Station, introducing myself to the staff and finding out what each
12 person did. There were also several employees who came to my door to lodge various complaints
13 – many of which I either did not fully understand or was not yet in a position to address. I
14 convened my first staff meeting for Friday, March 2, 2001.

15 There were also a number of other important projects that required my immediate
16 attention. The most significant was the annual spring fundraising drive. Although there had been
17 a fundraiser in late winter, before I came to the Station, that fundraiser fell short of the funds
18 needed to keep the Station in the black through the fiscal year, and the Station still needed to
19 conduct a further fundraising drive. Preparation for the annual spring drive typically occurs
20 months in advance, and it was critical that we get the fund drive on the air as soon as possible.
21 After weeks of intense preparation and promotion, we conducted a late spring drive in June 2001.

22 The second urgent matter was completing the Corporation for Public Broadcasting (CPB)
23 Annual Activity Survey. CPB is a significant funding source for KALW and the Station. When I
24 arrived in March 2001, I learned that the survey response for fiscal year 1999 and Activities
25 Report for 2000, necessary to secure CPB funding, had not been filed with CPB. After a
26 significant investment of time and effort, we submitted the FY 1999 Annual Activity Survey on
27 March 19, 2001. Since March 2001, the Station has timely filed all CPB-required forms and
28 applications.

1 On the programming front, one of the immediate issues I confronted was residual fallout
2 from the removal of the popular show "Tangents" from our program list. The former GM,
3 Michael Johnson, had removed it from the air against the vocal opposition of many listeners. I
4 recall spending time with constituents, producers and other staff learning what happened and then
5 figuring out what to do.

6 March 1, 2001 was also the self-imposed deadline for going to print with the Station's
7 spring/summer Program Guide. I devoted a significant amount of time to preparing the guide
8 over the next few weeks.

9 In short, I had a very full plate during those first few weeks.

10
11 **Q; When did you learn about the license renewal issue?**

12 In those first days at the Station I saw Bill working at the file cabinet near his desk. He
13 was being assisted by a volunteer at the Station. At one point Bill said something to the effect of
14 "we are attempting to complete the file ... saw some things were missing ... filled in the
15 Ownership Reports" Either on that same day or the next, Bill informed me that there had
16 been a license challenge against the Station pending since 1997. My first reaction was shock:
17 Who would have filed a petition to deny the license and more importantly, how could something
18 this important linger since 1997? My second reaction was: What can I as the new General
19 Manager do to get this resolved?

20 I first wanted to talk to the Station's lawyers and find out what was going on. I needed to
21 be briefed, and on March 2, 2001 – just my second day at work – Bill and I spoke with Ernie
22 Sanchez (of the Sanchez Law Firm), communications counsel to SFUSD. I knew Ernie from my
23 days at NPR in Washington. I do not specifically recall discussing the Bureau's February 5, 2001
24 Letter of Inquiry (LOI), but it is clear to me now that I must have received it at that time and
25 reviewed it shortly thereafter.

26 At that time my principal interest in this issue was to reinvigorate the Station's attempts to
27 resolve the license renewal challenge to see if we could come to a prompt resolution with the
28 FCC. I did not know the relevant historical facts, and I was not a lawyer, so any role I could play

1 would be limited primarily to administration. Bill would be the person relied on for the facts and
2 documentary history. The Sanchez Law Firm and the District's lawyers were the ones navigating
3 the regulatory and legal field.
4

5 **Q: Did you review the February 5, 2001 Letter of Inquiry?**

6 Yes. Although I do not have a specific recollection of reading the document, I am aware
7 that the LOI asked a number of questions as to whether the Station had maintained certain
8 documents in its public inspection file (PIF). I was generally familiar with a PIF but not with the
9 specific requirements. In my prior positions I had reviewed the NPR Station Manager's
10 Handbook and the National Federation of Community Broadcasters (NFCB) Model Station
11 Handbook. These contain numerous FCC regulations but I never had reason to carefully review
12 the provisions relating to the PIF. Thus, while I had a general understanding of what the LOI
13 asked, I had no specific understanding as to how those questions should be analyzed and
14 answered.

15 I do not recall being "tasked" to do anything by the Sanchez Law Firm or anyone else but
16 it would have been my nature to quickly try to gain a general understanding of what was
17 happening so that I could participate in the process and move it forward. At a certain point I
18 specifically recall saying "Okay, Bill, show me the public inspection file."

19 My conversations with Ernie during this time -- I don't recall if there was more than one --
20 were of the nature: "how did we arrive at this point and what can we do to move this forward?"
21 During the next several weeks, over the course of conversations with Ernie and his partner Susan
22 Jenkins, as well as discussions with Bill and others at the Station, I came to learn about the
23 obstacles the Station confronted following the earthquake of 1989 up through and including the
24 formation of the Golden Gate Public Radio group and their Petition to Deny the renewal
25 application.
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1 **Q: Did you write a memo dated March 8, 2001 in response to your review of the LOI?**

2 Yes. At my deposition, I was uncertain as to whether I had reviewed the LOI and did not
3 recall drafting the March 8 memo. While I do not have a specific recollection of sitting at the
4 computer and typing the memo, it is clear that I reviewed the LOI and the Station's PIF and
5 expressed my initial views regarding the responses that should be made to the FCC. At the time
6 of my deposition on September 28, 2004, however, I had not seen the March 8 memo in over
7 three and a half years. In fact, I wasn't asked about the memo at my deposition and was not told
8 about the document until some time afterwards.

9
10 **Q: What did you do to prepare for your September 28, 2004 deposition?**

11 The September deposition was just the second time that I have been deposed. The first
12 related to my employment at KPFA. My expectation was that I would be asked to discuss what
13 the Station was doing on the programming front and its fiscal situation and my role in bringing it
14 to its current status. An associate from Louise Renne's law firm came to the Station and I worked
15 with him to identify certain background information requested by the Enforcement Bureau. None
16 of this material involved the LOI.

17 In preparing for the deposition I reviewed several of the key official filings, including
18 GGPR's Petition to Deny and the Hearing Designation Order (HDO). Because I arrived so late in
19 the license renewal process, I did not anticipate that I would be asked detailed questions from the
20 March/April 2001 period or the April LOI response, and I did not review the LOI or the response
21 prior to my deposition.

22 As many of the events identified in the HDO occurred years earlier, on my own initiative I
23 also reviewed several documents I had retained with respect to Ernie. For several years, I had
24 maintained an "Ernie File" which contained documents I received from Ernie. The "Ernie File"
25 consists largely of marketing or "heads up" pieces that the Sanchez Law Firm distributes to its
26 clients. When the subject of the article was of potential interest to the Station, I placed a copy in
27 the file for later review. On rare occasion I also filed copies of documents that I sent to Ernie.

28

1 Q: Was the March 8 memo in the "Ernie File"?

2 No. My "Ernie File" did not contain the March 8, 2001 memo because I had not created
3 the "Ernie File" at the time that memo was written and did not later place a copy of the memo in
4 the file. At the time of my deposition, I did not remember the March 8, 2001 memo. Moreover, I
5 was under the impression that I had lost all of my archived documents when my computer died in
6 2003, so it had not occurred to me to search my computer's hard drive. As I stated in my
7 Declaration dated March 2, 2005, I did not realize until January 2005 that the computer technician
8 who worked on my transition to a new computer had placed some retrieved documents and e-
9 mails within a new folder called "MyDocs" – which is different from the "My Documents" folder
10 that I typically use to store and retrieve documents. In any event, it is not my practice to print
11 paper copies of electronic documents and place them in the file.

12
13 Q: What was your impression of the deposition?

14 Initially, I believed that the deposition went well. Mr. Shook treated me respectfully,
15 asked clear questions and did a good job of reminding me of events that I had forgotten.
16 However, when I later reviewed the Bureau's Motion to Enlarge Issues and my deposition
17 transcript, I was disappointed at how poor my recollections appeared and that several of my
18 responses appeared glib. I was a little embarrassed. I still am. The March 8 memo is something
19 that I should have remembered.

20 I subsequently worked with counsel at Hogan & Hartson to prepare a declaration that
21 would provide information that I had not recalled and to provide additional facts and details on
22 matters that had not been completely discussed at the deposition.

23 In preparation for this testimony I have continued to review documents, e-mails and any
24 other information that might improve my recollection of the period in question.
25
26
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1 Q: Having now reviewed the March 8 memo, what conclusions do you recall drawing in
2 *response to your review of the PIF in response to the LOI?*

3 From reviewing the March 8 memo, **Proposed EB Exhibits 20 and 21 (by stipulation)**,
4 under "1)" I stated "No" and explained that the 1993 and 1995 Ownership Reports were put in the
5 file on December 10, 1997 -- which I likely assumed because the 1993 and 1995 reports in the
6 public inspection file were signed on that date. While the March 8 memo states that copies of the
7 1993 and 1995 reports were enclosed with the memorandum, at the time of my deposition, I had
8 not remembered that I had sent copies of ownership reports to Ernie at that time. I did recall, as I
9 stated at my deposition, pulling from the KALW public inspection file in 2004 the pages relating
10 to the 1993 and 1995 Ownership Reports, including the December 10, 1997 signature pages, that
11 were provided to the Enforcement Bureau in connection with SFUSD's response to admissions.
12 **Proposed SFUSD Exhibit No. 17**, is a true and correct copy of SFUSD's Revised Objections
13 and Responses to Enforcement Bureau's Request for Admission of Facts and Genuineness of
14 Documents, dated October 12, 2004, with attachments.

15 I also noted under "1)" that the 1999, 2000 and 2001 Ownership Reports were missing but
16 had since been filled out and signed. I also noted under "4)" that "all reports were corrected in
17 the Fall of 1997 when matters came to the attention of then General Manager, Jeff Ramirez." I do
18 not recall how I knew what Jeff Ramirez had done regarding the ownership reports but I presume
19 I was told this by Bill who had been KALW's Operations Manager during that time period. I
20 concluded under "5)" that "Ownership reports are now completed and current."

21 Under "2)" of the March 8 memo, I discussed the history of what I described as the
22 "physical chaos" at the Station. As I explained at my deposition, I was not employed at the
23 Station during the 1991-97 license term; therefore I had no personal knowledge as to what was in
24 the KALW public inspection file on August 1, 1997. I explained at my deposition that I had
25 started to look at the public inspection file at the very beginning of March and "was just trying to
26 connect the dots with all this and trying to get movement." Under "5)" I also stated that "Issues
27 and program listings are current, and back listings are in the process of being completed to the
28 best of our ability."

1 **Q: Do you have a present independent recollection of what you found in the public**
2 **inspection file in March 2001?**

3 Even after reviewing the March 8 memo, contemporaneous e-mails and other documents,
4 I do not have an independent recollection of what I found or did not find in early March 2001 in
5 the public inspection file regarding issues/programs lists. But I note that I stated "No" under "2)"
6 of the March 8 memo in response to the LOI question as to whether on August 1, 1997, the public
7 inspection file contained all the required issues/programs lists.

8 Again, my view at the time was that I was going to motivate Bill and Ernie to get the LOI
9 answered and to move forward with the license renewal. Ernie asked Bill to get the PIF in order
10 and up-to-date. That was a project that Bill and Ernie worked together on. The extent of my
11 involvement, as I recall, was to keep up with both of them to make sure that this project did not
12 rest.

13
14 **Q: Beyond the March 8 memo, what was your involvement in the drafting of KALW's**
15 **response?**

16 As I noted earlier, on March 9, 2001, I took a three-day vacation with my son. Upon
17 returning to the Station on March 12, I devoted the vast majority of my time and efforts to other
18 needs of the Station. While the LOI response was of critical importance to the Station, it was not
19 something that I personally devoted significant time to. The project appeared in good hands with
20 Bill and the lawyers.

21 Two things stand out, however, relating to the license renewal challenge during that
22 period. The first is that at some point I recall being advised by Ernie that we had received an
23 extension of time to file our response and thinking that this was a good thing. We certainly
24 wanted to do a thorough job. I also recall one or two additional conversations with Ernie and/or
25 Susan Jenkins but I don't recall the substance. Ernie and Bill would periodically provide me with
26 historical facts about the Station, particularly as it related to the effect on the Station from the
27 1989 earthquake and the events leading to the formation of GPPR and the Petition to Deny. The
28 other topic that I recall discussing with Ernie at this time was his contention that a competing

1 station was using our wattage and that we should reconsider that arrangement. Apparently, this
2 *was something that most did not consider a priority and from what I understood of the issue, I did*
3 not think the Station could afford to have the Sanchez Law Firm pursue it.

4 I was asked at my deposition if I remembered who was tasked to respond to specific
5 questions in the LOI. I testified that I did know that Bill was reviewing the PIF, the
6 issues/programs list specifically, organizing the PIF and providing copies of documents to
7 counsel for use in drafting the response. **Proposed SFUSD Exhibit No. 18** are excerpts from my
8 September 28, 2004 deposition as they were filed with the FCC in SFUSD's Opposition to the
9 Motion to Enlarge. In retrospect I could have been clearer. What I intended to convey was that
10 Bill and Ernie were working together to draft the response, and that ultimately the response would
11 be reviewed by Ernie and Bill.

12 **Proposed SFUSD Exhibit No. 19 [also Proposed EB Exhibit 23] (by stipulation)** is an
13 e-mail dated March 26, 2001, that I sent to Ernie requesting a status report on the LOI response. I
14 also specifically directed that Jackie Wright and David Campos (KALW's liaison to the District
15 and the counsel from the City Attorney's Office working on District matters, respectively) be
16 copied on the draft response and that they approve any response prior to filing. This is consistent
17 with my recollection of staying on top of Ernie to move this process along, to make sure the
18 appropriate people at the District were involved, and to facilitate any support or fact-finding Ernie
19 needed from the Station. It is also consistent with my feeling that this was a pivotal issue that
20 required expertise and oversight that I could not offer. I wanted to bring as many people as
21 possible into this decision making process because I was not in a position to be a substantive
22 contributor.

23 Notwithstanding the concurrent work by Ernie and Bill to respond to specific questions in
24 the LOI, I also spent time in March satisfying myself that the PIF was presently complete from
25 1992 on. I don't recall precisely when this happened or how much time I spent actually looking
26 through the file or in conversation with Bill and Ernie. As I have mentioned before, given the
27 other time-sensitive priorities on my plate at the time, I likely did not spend a lot of time actually
28 looking through the file. At some point I instructed Bill to move the PIF into my office to a

1 locked cabinet and advised staff as to new procedures for accessing it. I also took several steps to
2 make sure that going forward, the PIF would reflect all public affairs programming.

3
4 **Q: Did you review a draft of the response to the LOI?**

5 I don't specifically recall reviewing a draft of the LOI response but I do remember
6 speaking with Ernie and Bill to determine the status of the response and to make sure that the
7 appropriate people at the District were included in its review. I was now immersed in the other
8 significant priorities of the Station and mostly recall being relieved that knowledgeable staff at
9 the District, the Station and Ernie seemed to be actively engaged in the response. The project
10 appeared in good hands and I remained comfortable playing an auxiliary role.

11 On April 2 there was a conference call that included myself and Bill from KALW and
12 Ernie and Susan Jenkins. **Proposed SFUSD Exhibit No. 20 [also Proposed EB Exhibit 26] (by**
13 **stipulation)** is an e-mail that I composed on the following day to summarize that call. As noted
14 in **Proposed SFUSD Exhibit No. 20**, the purpose of the call was to provide me with further
15 historical background on the Station and an update on the license renewal challenge. I do not
16 recall what, if any substantive conversations we had. At that point I was still absorbing
17 information and recall that those conversations tended to be fairly one-sided with me asking a
18 question such as "So how did GGPR obtain documents to submit in its petition to deny that it
19 then claimed were not in the PIF?" and the lawyers doing most of the talking. I thought that the
20 history of the Station, including its important role in the community was an important aspect of
21 the renewal proceeding. I believed that the difficult obstacles overcome by the Station should be
22 part of the response.

23 **Proposed SFUSD Exhibit No. 21 [also Proposed EB Exhibit 29] (by stipulation)** is an
24 e-mail from Ernie Sanchez dated April 3, 2001 to David Campos containing a draft of the LOI
25 response. Bill, Jackie Wright and myself were copied on the e-mail. This is the only draft of the
26 LOI response that I recall seeing. While Ernie's e-mail message states that the draft response is
27 based on discussions with Bill and me, I do not recollect having any substantive conversations
28 with either Ernie or Susan Jenkins beyond learning about the Station's history and opining that

1 this was an important issue to convey in the renewal process, if possible. I understood that Bill
2 was providing a declaration because he had provided the substantive elements of our response.

3 I feel it is important to note that at this stage, I had been on the job for approximately one
4 month, I had never gone through one of these regulatory filings before, and there were
5 experienced communications counsel involved as well as individuals with significant personal
6 understanding of the present situation. Not only was I grateful to defer to other qualified people,
7 it was the only appropriate course.

8
9 **Q: Did you compare the April 3 draft response to your March 8 memo?**

10 I do not remember comparing the April 3 draft response to the March 8 memo or having
11 any substantive conversations thereafter with Ernie, Susan Jenkins or Bill. Reviewing those
12 documents today, it is clear that there were differences between the April 3 draft response and the
13 March 8 memo – in particular the change from “No” to “Yes” in response to directives numbers 1
14 and 2 and the failure to disclose the signing of the 1993 Ownership Report in 1997. However, at
15 the time, it seemed that on the whole the draft explained the difficulties the Station had
16 experienced with the PIF. I knew that Bill would also be reviewing the draft. I did not know,
17 until it was pointed out in connection with my review of documents provided in January 2005 by
18 the Sanchez Law Firm – including the March 8 memo – that the final version of the response to
19 the LOI differed from the draft circulated on April 3, 2001.

20 Looking back, I strongly regret not paying more attention to the draft response and the
21 version that ultimately was submitted to the FCC. Obviously, someone either disagreed with or
22 ignored my initial assessment. As I have no recollection of ever discussing the March 8 memo
23 with anyone, my guess is that it was the latter. This was not a process where several versions
24 crossed paths. Why the lawyers ultimately decided that my answers were not correct, I cannot
25 say. I was not the expert on these matters. Bill ultimately played a larger role with Ernie and
26 Susan Jenkins, I assume because he had been at the Station all along.

27 As noted earlier, there were many other pressing matters on my agenda at the time. I had
28 looked at the issue in March had no reason to think that my prior input would not inform the

1 response they drafted, and believed that the matter was in good hands. I was satisfied that the
2 process was moving forward and hopeful that soon this ordeal would be behind us.

3
4 **Q: Did you have any other contacts with Ernie Sanchez or Susan Jenkins during this**
5 **time frame?**

6 Around the time the LOI response was filed, my priority was getting the issue of the
7 license renewal before the Superintendent. In **Proposed SFUSD Exhibit No. 20**, an e-mail dated
8 April 3, I stated to Ernie and Susan Jenkins that there was a need for a summary of the renewal
9 challenge to help David Campos, Jackie Wright and myself understand it, since all of us were
10 new to the situation. **Proposed SFUSD Exhibit No. 22** is true and correct copy of a report
11 prepared by Ernie Sanchez on May 24, 2001 entitled "Report on License Renewal" that describes
12 the license renewal history. I received a copy of the report on or about May 24, 2001 and
13 distributed the report to Jackie Wright at SFUSD.

14
15 **Q: What involvement did you play in the FCC challenge between the April 5, 2001 LOI**
16 **response and the issuance of the HDO (August 2004)?**

17 The status of the license renewal was a matter of great concern that continued to cast a
18 cloud over the Station. I felt it put the Station at risk. I wanted to know what was going on. If
19 there was anything that we could be doing at the Station level to move the process forward, I
20 wanted to ensure it got done.

21 Towards this end, I would periodically e-mail or call Ernie for both an update on the status
22 of the renewal and to encourage him to prioritize this matter on his own docket. In preparation
23 for this testimony, I reviewed my e-mail archives for the period between April 6, 2001 and
24 September 28, 2004. I located a number of e-mails I wrote to Ernie during this time. Several of
25 the e-mails are undated. I understand that this is the result of the computer crash of 2003.
26 Although many archived e-mails were restored, in some cases the dates are not available. I recall
27 writing these e-mails to Ernie and can attest that they were sent between April 6, 2001 and July
28

1 16, 2004. I also spoke with Ernie on the phone or left voice messages. These contacts are
2 reflected in the following e-mails:

3 **Proposed SFUSD Exhibit No. 23** is a true and correct copy of an e-mail exchange dated
4 5/17/01 that contains an e-mail from myself to Ernie Sanchez on 5/9/01. The re line is "our
5 conversation." The e-mail states, in part: "I do hope that we can somehow use some muscle in
6 Washington DC to push this further. However, that is beyond my influence."

7 **Proposed SFUSD Exhibit No. 24** is true and correct copy of an undated e-mail exchange
8 that contains an e-mail dated 4/2/03 from Ernie Sanchez to me confirming that I had left a
9 message for him on 4/2/03 requesting an update on the renewal proceeding. Ernie's response
10 indicated that he had "been checking with FCC on a daily basis." He further wrote that "this is a
11 delicate matter because we have to strike a balance between showing the staff we need an answer
12 without making them feel that they are being hounded."

13 **Proposed SFUSD Exhibit No. 25 [also Proposed EB Exhibit 54] (by stipulation)** is an
14 undated e-mail exchange that contains an e-mail dated 4/3/03 from Ernie Sanchez to me
15 confirming a conversation he had earlier that day with Bill. The e-mail states that the Station is
16 "only a few days away from FCC issuance of the KALW renewal decision."

17 **Proposed SFUSD Exhibit No. 26** is a true and correct copy of an undated e-mail
18 exchange that contains an e-mail dated 4/14/03 between myself and Ernie Sanchez. The re line is
19 "KALW Renewal Status." Ernie writes that he expects a decision "in days." My response states,
20 in part: "We wait with bated breath. You have all my numbers..."

21 **Proposed SFUSD Exhibit No. 27 [also Proposed EB Exhibit 55] (by stipulation)** is an
22 e-mail exchange dated 5/29/03 that contains an e-mail earlier that same day from myself to Ernie
23 Sanchez. The e-mail states: "Ernie, I just don't understand why this is proceeding like this."

24 **Proposed SFUSD Exhibit No. 28** is a true and correct copy of an undated e-mail
25 exchange that contains an e-mail dated 6/30/2003 from Ernie Sanchez to me in which Ernie
26 provides an update on the license renewal. Because of the inability to resolve the matter, the
27 Sanchez law Firm offered to write-off the District's legal bill for the last six months of the fiscal
28 year. In the e-mail, Ernie wrote "I think it is appropriate for us to acknowledge the hardship that

1 the FCC delays have caused you ... I hope to be in touch with you soon with news on the pending
2 renewal." I accepted Ernie's offer and urged him to continue pursuing renewal and wrote, "Let's
3 hope for a quick resolution."

4 **Proposed SFUSD Exhibit No. 29**, is true and correct copy of an e-mail exchange date
5 7/23/02 that contains an e-mail earlier that same day from myself to Jackie Wright confirming
6 that I had called Ernie for an update on the renewal proceeding. Ernie informed me by e-mail that
7 "there is still no indication of any major problems – like a nonrenewal." I expressed to Jackie
8 Wright my continued frustration of this matter hanging over the Station.

9 **Proposed SFUSD Exhibit No. 30** is a true and correct copy of an undated e-mail from
10 myself to Ernie Sanchez. The re line is "Waiting." The e-mail asks whether there is "any news
11 on the timeline ... Really need to push this now before the holiday break."

12 **Proposed SFUSD Exhibit No. 31** is a true and correct copy of an undated e-mail from
13 myself to Ernie Sanchez. The re line is "Long time ..." The e-mail states that "I give up on the
14 license challenge. If I don't bellyache about it, then it seems there is no movement or pressure for
15 resolution ... The station remains at risk, I can only report that there has been zero progress."

16 **Proposed SFUSD Exhibit No. 32** is true and correct copy of an undated e-mail from
17 myself to Ernie Sanchez. The re line is "Interesting...." The e-mail states that "I'm antsy. Have
18 you heard anything? Is a trip to DC to go to the FCC worth it?"

19 **Proposed SFUSD Exhibit No. 33** is a true and correct copy of an undated e-mail from
20 myself to Ernie Sanchez. The re line is "Hello and" The e-mail states: "Good speaking with
21 you the other day" and reiterates the District's request to draft lobbying letters from influential
22 politicians on behalf of the Station's renewal.

23 **Proposed SFUSD Exhibit No. 34** is a true and correct copy of an undated e-mail from
24 myself to Ernie Sanchez. The re line is "Hello!" The e-mail states that this is "Just my every-so-
25 often check-in to see if there is any resolution towards resolution re: kalw license."

26 **Proposed SFUSD Exhibit No. 35** is a true and correct copy of an undated e-mail from
27 myself to Ernie Sanchez. The re line is "Any news?" The e-mail states that "I'm just wondering
28 if there is any movement regarding the license? I so want this to be resolved."

1 **Proposed SFUSD Exhibit No. 36** is a true and correct copy of an undated e-mail from
2 myself to Ernie Sanchez. The re line is "It is now May!!!!" The e-mail states: "We are now well
3 past the deadline you assured us that we would have an answer by."

4 **Proposed SFUSD Exhibit No. 37** is a true and correct copy of an undated e-mail from
5 myself to Ernie Sanchez. The re line is "news?" The e-mail states: "Hope you had a nice Easter.
6 Just wondering ... any news?"

7 **Proposed SFUSD Exhibit No. 38** is a true and correct copy of an undated e-mail from
8 myself to Ernie Sanchez. The re line is "License and letters." The e-mail states: "Please let us
9 know the status."

10 These e-mails are consistent with my recollection that during the period from April 6,
11 2001 through July 16, 2004, I would routinely contact Ernie to determine the status of the license
12 renewal and to encourage him to take steps to move the process along.

13
14 **Q: Who was responsible for the PIF during this time?**

15 As discussed above, one of the first things I did as General Manager was to move the PIF
16 into a locked file cabinet in my office and to limit access to working hours when someone
17 reviewing the file could be observed. From the time I started until October 2004, Bill was
18 responsible for maintaining the PIF. I would periodically remind Bill that updates needed to be
19 made within 10 days after each quarter or direct him to place specific documents into the file. I
20 also circulated periodic reminders to Bill and others regarding our procedures for maintaining
21 files.

22 **Proposed SFUSD Exhibit Nos. 39 through 43** are true and correct copies of e-mails
23 exchanges that are representative of the type I would periodically send to Bill with instructions
24 that he place attached documents in the PIF or that he collect certain documents and place them in
25 the file.

26 In October 2004, I personally took control of the PIF. **Proposed SFUSD Exhibit No. 44**
27 is a true and correct copy of an e-mail from myself to Station programmers confirming this
28 change and describing procedures for the maintenance and submission of certain documents. The

1 e-mail was also copied to District officials and our new counsel, Hogan & Hartson. **Proposed**
2 **SFUSD Exhibit No. 45**, which is a true and correct copy of a letter that I sent to the District,
3 provided formal notice to SFUSD of this change in responsibility. The letter to the District also
4 confirmed that Bill would no longer be responsible for FCC regulatory matters and that all such
5 matters must be approved and discussed with counsel.

6
7 **Q: What was the status of the Station in July 2004?**

8 Each year since I started at KALW (with the exception, I believe, of 2003) I have
9 prepared a "State of the Station" Report for the Superintendent. **Proposed SFUSD Exhibit No.**
10 **46** is a true and correct copy of the 2004 State of the Station Report that I prepared on December
11 21, 2004. The 2004 Report is divided into seven sections. The affairs of the Station did not
12 materially change from July 16, 2004 to December 21, 2004, so that the status of the Station on
13 December 21, 2004 is a reasonable surrogate for the status on July 16, 2004.

14 **Revenue and Fiscal Health:** In 2004, the Station experienced an increase in cash raised
15 and a positive balance sheet. The Station is presently raising over one million dollars directly
16 from listeners and from a small but growing business fundraising strategy. Our budget has
17 increased modestly each year since 2001 and for the fiscal year July 2003 through July 2004, our
18 operating budget was approximately \$1.3 million.

19 It is quite a feat for a station of this size to raise so much money directly from listeners.
20 The Station has no formal development department, no underwriting or sales representative, and
21 no fundraising board. KALW does have excellent programming that has consistently improved.
22 I operate with the principle that, in public radio, "Programming is Fundraising and Fundraising is
23 Programming."

24 In early 2001, the Station had approximately 8,000 members/donors – we now have
25 approximately 12,000 members/donors throughout the Bay Area and among our cyber on-line
26 listening audience as well.

27 **Programming and Fiscal Health:** In the Spring of 2001, KALW's audience was
28 measured at 99,000 weekly average audience. In 2004, our audience was measured at between

1 134,000 to 145,000 weekly average audience, not counting online listening from all over the
2 world.

3 I believe this growth is attributed to one thing – outstanding programming. KALW now
4 broadcasts more local and original programming than the other major provider of public radio
5 programming in the Bay Area, KQED(FM). KALW has collaborated with a plethora of local
6 organizations to produce programming both on a one-time and ongoing basis. KALW has
7 brought in new talent and has received more awards in the past three years than in the Station's
8 entire history.

9 Each quarter the Station prepares a bound Program Guide. **Proposed SFUSD Exhibit**
10 **No. 47 (by stipulation)** is a set of copies of KALW's Program Guides that include the period
11 July 16, 2003 to July 16, 2004. The Program Guide is accurate except for the rare occasion when
12 a program must be preempted for breaking news, special events or changes in program
13 availability. The Program Guide contains detailed program information for the upcoming quarter
14 including the title, schedule and a brief description of individual shows that are responsive to
15 community needs and interests. It also highlights certain programs each quarter through
16 enhanced formatting and description. For much of my tenure Bill and I determined what appears
17 on the cover and the programs to be highlighted in that issue. Because of Bill's eyesight trouble,
18 another staff member has stepped into his role with respect to the Program Guide. The Program
19 Guide is formatted and printed by an outside vendor and mailed to each of our approximately
20 12,000 members. In addition, the Station orders several thousand additional copies that are
21 distributed to all local schools, District offices, and other public meeting places in the community.

22 A partial list of our programming collaborators from July 16, 2003 through July 16, 2004
23 include: New California Media (a consortium of over 400 ethnic news organizations); YO!
24 Youth Outlook; Pacific News Service; Working Assets, Inc.; Berkeley Symphony; SFUSD Back
25 to School Rally; Global Exchange; Youth Speaks; Ben Manilla Productions; Stanford University;
26 Science Interchange; A Clean Well-Lighted Place for Books; Stern Grove Festival; the Jewish
27 Community Center and the Osher Center for Lifelong Learning at SFSU; British Broadcasting
28 Corporation; Mechanics Institute Library; Code Pink; The Commonwealth Club of California;

1 San Francisco Planning and Urban Research; LitQuake; 856 Valencia Street; Other Minds
2 Festival, UCSF; Vote for Change; Lavender Youth Recreation and Information Center; Z Space
3 Collective; BRAVA! Center for the Arts, and a host of independent producers.

4 KALW has conceived and launched many new programs, including: UpFront; Dispatches
5 From the New Majorities; Out in the Bay; Invisible Ink; The Human Chorus; Philosophy Talk;
6 Writer's Voice Radio; Working Assets Radio – now “Your Call;” Then and Now; and many one-
7 time broadcasts, such the annual Superintendent's State of the Schools Address.

8 The latest accomplishment of KALW is the debut of KALW News. With grant support,
9 and after many months of preparation, we launched this service in the Fall of 2004. Once a week,
10 KALW News airs a half-hour of local news features. Several KALW News pieces – about
11 wealth and poverty – have been aired on NPR's Morning Edition.

12 I am also very proud that KALW News, NPR's Next Generation Project and Radio & TV
13 News Directors' Association (RTDNA) will be undertaking a student training program in March
14 2005 with five students from the District's Burton Academic High School. NPR journalists will
15 work for a week with the students and our news director to train the next generation of public
16 radio journalists. The training will take place at KALW and the end product will be a short
17 documentary entitled My Neighborhood: Visitation Valley. This is just one of the outstanding
18 programs that the Station has coordinated with SFUSD and is illustrative of the productive
19 relationship between the District and KALW.

20 One of the reasons we have been effective at serving the community is because we are
21 committed to ascertaining and responding to its needs and interests. At least once or twice per
22 quarter I host a one hour program called “Manager's Report to the Listener” where callers express
23 their opinions on-air about existing programming and ideas for new programming. This direct
24 feedback is vital to the Station's desire to remain tapped into the pulse of the community and is
25 the only program of its kind in San Francisco. In addition, I frequently read and respond to
26 listener e-mails and letters. I also routinely meet with and communicate with our programming
27 collaborators such as New California Media and visit different journalism outlets in the
28 community to determine what is going on in their area and to identify subject areas that are being

1 underreported that we are equipped to cover. Finally, the Station maintains an open phone line
2 *where callers can leave their thoughts or suggestions.* The information we ascertain through these
3 channels is evaluated by the Station and its program producers as part of its review of existing
4 programming and the identification of new programming.

5 **Technology and Digital Conversion:** KALW has recently been able to upgrade our
6 editing facilities to digital editing. Our engineer does a marvelous job maintaining the integrity of
7 our equipment without a substantial budget.

8 KALW recently switched over to a new digital transmitter. The analog transmitter served
9 the Station well for over 20 years, but with financial help from CPB, and a generous private
10 donor, we were able to take advantage of grant seed funding for conversion to digital
11 transmissions. This is of tremendous value to the Station, the District and the public because it
12 ensures that the Station's service will continue to be available in the digital age.

13 **FCC Filings and Reports:** Proposed SFUSD Exhibit No. 48, is a true and correct copy
14 of a memo dated September 27, 2004 that I and others received from Superintendent Ackerman
15 regarding use of communications counsel. The memo directs that all FCC regulatory matters and
16 filings must be coordinated with and cleared through outside communications counsel. If
17 KALW's license is renewed in this proceeding, outside communications counsel and SFUSD
18 attorneys will ensure that future renewal applications are complete, accurate and timely-filed.
19 Moreover, outside communications counsel will work with the District to ensure that the biennial
20 ownership reports are timely-filed with the FCC and placed in the Station's PIF.

21 A continuing FCC requirement is the completion and placement of issues/programs lists
22 in the KALW public inspection file by the 10th day following each calendar quarter, identifying
23 programs aired on KALW that addressed significant issues of interest to the community. I am
24 personally overseeing that this is done correctly and in a timely manner. There may also be
25 filings with the FCC related to KALW's digital conversion. As directed by the Superintendent,
26 all FCC filings will be vetted in advance with outside communications counsel.

1 Q: What awards has the Station received during the period between July 2003 and July
2 2004?

3 The Station's outstanding programming since 2001 has been widely recognized not only
4 by the San Francisco community, but also by many national organizations. Awards received by
5 the Station for work reflecting exclusively the period from July 2003 through July 2004 include:

- 6 • 2004 National Federation of Community Broadcasters SILVER REEL AWARD,
7 Local Music/Program, Roman Mars, KALW: Invisible Ink "Found."
- 8 • 2004 National Federation of Community Broadcasters SILVER REEL AWARD, Arts
9 & Feature Reporting – Holly Kernan, Eric Wane, Daniela Rible, KALW, NCM –
10 Wisdom vs. Text.
- 11 • 2004 SFGATE – ePick – KALW's Writer's Voice Radio.
- 12 • 2004 San Francisco Bay Guardian – "Minds over Matter" Award.
- 13 • 2005 National Federation of Community Broadcasters, GOLDEN REEL AWARD
14 Winner, National Music Production, Ben Manilla Productions Inc. / Experience Music
15 Project: The Blues Mystery Train.
- 16 • 2005 National Federation of Community Broadcasters, SILVER REEL AWARD
17 Winner, Local Music/Entertainment Programming or Special, Kevin Vance: A
18 Patchwork Quilt: Martin Luther King Jr.'s Birthday.
- 19 • 2005 National Federation of Community Broadcasters, SILVER REEL AWARD
20 Winner, Local News and Public Affairs Features, Holly Kernan: Kids of Incarcerated
21 Parents.
- 22 • 2005 National Federation of Community Broadcasters, SILVER REEL AWARD
23 Winner, Local Programming – Other, Holly Kernan: Undocumented: Day in the Life.
- 24 • 2005 National Federation of Community Broadcasters, SPECIAL MERIT AWARD
25 Winner, Personal Essays, Roman Mars: Note to Sixth-Grade Self.
- 26 • 2005 National Federation of Community Broadcasters, GOLDEN REEL AWARD
27 Finalist, Personal Essays, Sandip Roy and Eric Wayne: Dear Jagdeesh.
- 28

- 1 • 2005 National Federation of Community Broadcasters, GOLDEN REEL AWARD
2 Finalist, Local Music/Entertainment Programming or Special, Kevin Vance: A
3 Patchwork Quilt: A Jewish-Arab Dialogue.

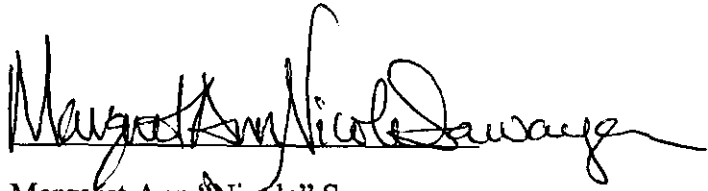
- 4 • 2005 National Federation of Community Broadcasters, GOLDEN REEL AWARD
5 Finalist, Local Documentary, Elizabeth McNamee and KALW: Californians and
6 Their Music, 1890-1910. Distributed by KALW: Minstrelsy to Movies.

7 Another significant recognition received by the Station during this period was being
8 selected as one of four stations nationwide to participate in the "Tomorrow Radio Project." This
9 was a collaboration between National Public Radio, the Corporation for Public Broadcasting and
10 the Harris Corporation to test and model next generation high-definition radio. KALW was the
11 only station of its size to be included in the program and was chosen ahead of many larger public
12 radio stations.

13
14 **Q: Aside from the Hearing Designation Order, has KALW been the subject of any**
15 **notices of violation, notices of apparent liability or forfeiture orders for violation of FCC**
16 **rules since you began at the Station in March 2001?**

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1 I declare under penalty of perjury that the foregoing is true and correct.
2
3

4 
5 Margaret Ann "Nicole" Sawaya
6

7 Executed this 29 day of April, 2005.
8
9

10
11
12
13
14 Federal Communications Commission
15 Docket No. 04-191 Exhibit No. 3T
16 Presented by SFUSD
17 Disposition { Identified 5-26-05
18 { Received 5-26-05
19 { Rejected _____
20 Reporter Eric S. Stodnick
21 Date 5-26-05
22
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